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5
6 **IN THE SUPREME COURT**
STATE OF ARIZONA

7
8 In the Matter of:

Supreme Court No. R-20-0033

9 **PETITION TO AMEND RULE**
10 **44(a) OF THE RULES OF FAMILY**
11 **LAW PROCEDURE**

COMMENT OF THE STATE
BAR OF ARIZONA

12
13 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby submits the following as its comment to the
15 above-captioned Petition.

16
17 The Petition, filed by Judge Bruce R. Cohen, Presiding Judge of the family
18 court department of the Maricopa County Superior Court, requests to amend Rule
19 44(a) of the Arizona Rules of Family Law Procedure.

20
21 Rule 44(a)(2)(E) currently provides that “a copy of the proof or acceptance of
22 service establishing the date and manner of service on the party in default” must be
23 attached to the written application for default.

1 The Petition notes that by an applicant attaching proof of service or an
2 acceptance of service, the judicial officer presiding over the case may easily
3 determine if the opposing party has been served. The Petition also notes that by
4 including this attachment, the opposing party would have notice of how and when
5 process was effectuated.
6

7 As the Petition points out, the Rule does not provide whether the failure to
8 include such an attachment renders the application defective and invalid. The
9 Petition seeks to correct an inconsistency in the application of the Rule in the event
10 the record otherwise demonstrates service. Modifying the Rule to avoid vacating
11 the default application, due solely to the non-attachment of either the proof or
12 acceptance of service, will standardize the application of the Rule. It will also help
13 correct a reported disproportionate impact on self-represented litigants.
14
15

16 The Petition requests that the following modification to the current language
17 of Rule 44(a)(2)(E):
18

19 establishes that service of process has been effectuated
20 either by attaching a copy of the proof or acceptance of
21 service or setting forth in the application (substantially in
22 the form set forth in Form 17, Rule 97) the date and
23 manner of service on the party in default; and

24 The State Bar concurs with the purpose of adding language that prevents an
25 otherwise valid application for default from being invalidated solely by failure to

1 attach proof of service or acceptance of service. However, the State Bar offers a
2 counterproposal to the Petition to allow the judicial officer presiding over the case
3 to determine that service has been effectuated when proof of service or acceptance
4 of service appears in the court record. Furthermore, the State Bar proposes this
5 change to allow a defaulting party to obtain information regarding service upon that
6 party while simultaneously ensuring that the applicant's claim of effectuated service
7 is supported by the court record.
8
9

10 Therefore, including the above-suggested language, Rule 44(a)(2)(E) would
11 read as follows:

12 establishes that service of process has been effectuated by
13 either 1) attaching a copy of the proof or acceptance of service
14 on the party in default or, 2) if proof or acceptance of service
15 appears in the court record, by setting forth in the application
16 the date and manner of service on the party in default; and

17 CONCLUSION

18 The State Bar of Arizona respectfully requests that the Petition be granted
19 with the proposed revisions described above.
20

21 RESPECTFULLY SUBMITTED this 1st day of May, 2020.
22

23 /s/ Lisa M. Panahi
24 Lisa M. Panahi
25 General Counsel

Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this 1st day of May, 2020.

by: Patricia Seguin

1 **APPENDIX**

2
3 The text modifications proposed by the original Petition will provide the
4 following language for Rule 44, Arizona Rules of Family Law Procedure:
5

6 (a) Application for Default.

7
8 (1) . . . [no change]

9 (2) Application. A party seeking default must file a written
10 application that:

11 (A) through (D) . . . [no change]

12
13 (E) ~~attaches~~ establishes that service of process has been
14 effectuated either by attaching a copy of the proof or acceptance
15 of service or setting forth in the application (substantially in the
16 form set forth in Form 17, Rule 97) establishing the date and
17 manner of service on the party in default; and

18 (F) . . . [no change]

19 [no new Form 17 was submitted with the Petition]
20
21

22 The counterproposal from the State Bar in this comment will provide the
23 following language for Rule 44:
24

25 (a) Application for Default.

1 (1) . . . [no change]

2
3 (2) Application. A party seeking default must file a written
4 application that:

5 (A) through (D) . . . [no change]

6
7 (E) ~~attaches~~ establishes that service of process has been
8 effectuated by either 1) attaching a copy of the proof or
9 acceptance of service on the party in default, or 2) if proof or
10 acceptance of service appears in the court record, by setting
11 forth in the application establishing the date and manner of
12 service on the party in default; and

13 (F) . . . [no change]